

AMENDMENTS TO LB 463

(Amendments to AM1131)

Introduced by Flood

1 1. Strike section 6 and insert the following sections:

2 Sec. 6. Section 43-2,108.01, Revised Statutes Cumulative  
3 Supplement, 2010, is amended to read:

4 43-2,108.01 Sections 43-2,108.01 to 43-2,108.05 apply  
5 only to persons who were under the age of eighteen years when the  
6 offense took place and, after being taken into custody, arrested,  
7 cited in lieu of arrest, or referred for prosecution without  
8 citation, the county attorney or city attorney (1) released  
9 the juvenile without filing a juvenile petition or criminal  
10 complaint, (2) offered juvenile pretrial diversion or mediation  
11 to the juvenile under the Nebraska Juvenile Code, (3) ~~or~~ filed  
12 a juvenile court petition describing the juvenile as a juvenile  
13 described in subdivision (1), (2), (3)(b), or (4) of section  
14 43-247, (4) filed a criminal complaint in county court against  
15 the juvenile under state statute or city or village ordinance for  
16 misdemeanor or infraction possession of marijuana or misdemeanor or  
17 infraction possession of drug paraphernalia, or (5) ~~or~~ the county  
18 attorney ~~or~~ city attorney filed a criminal complaint in county  
19 court against such the juvenile for a any other misdemeanor or  
20 infraction under state statute or city or village ordinance, other  
21 than for a traffic offense that may be waived or a misdemeanor or  
22 infraction not described in subdivision (4) of this section under

1 city or village ordinance that has no possible jail sentence. 7  
2 ~~under the laws of this state or a city or village ordinance.~~

3 Sec. 7. Section 43-2,108.02, Revised Statutes Cumulative  
4 Supplement, 2010, is amended to read:

5 43-2,108.02 For a juvenile described in section  
6 43-2,108.01, the county attorney or city attorney shall, ~~in~~  
7 ~~addition to the filings or actions described in such section,~~  
8 provide the juvenile with written notice that:

9 (1) States in plain language that the juvenile or the  
10 juvenile's parent or guardian may petition file a motion to  
11 seal the record with the court ~~to seal the record~~ when the  
12 juvenile has satisfactorily completed the diversion, mediation,  
13 probation, supervision, or other treatment or rehabilitation  
14 program provided ~~to the juvenile~~ under the Nebraska Juvenile Code  
15 or has satisfactorily completed the diversion or sentence ordered  
16 by a county court; and

17 (2) Explains in plain language what sealing the record  
18 means.

19 Sec. 8. Section 43-2,108.03, Revised Statutes Cumulative  
20 Supplement, 2010, is amended to read:

21 43-2,108.03 (1) ~~Notwithstanding subsection (2) of this~~  
22 ~~section, if the~~ If a juvenile described in section 43-2,108.01  
23 was taken into custody, ~~or~~ arrested, cited in lieu of arrest, or  
24 referred for prosecution without citation but no juvenile petition  
25 or criminal complaint was filed against the juvenile with respect  
26 to the arrest or custody, the county attorney or city attorney  
27 shall notify the ~~appropriate public office or~~ government agency

1 responsible for the arrest, ~~or~~ custody, citation in lieu of arrest,  
2 or referral for prosecution without citation that no criminal  
3 charge or juvenile court petition was filed.

4 (2) If the county attorney or city attorney ~~has~~ offered  
5 and ~~the~~ a juvenile described in section 43-2,108.01 has agreed  
6 to pretrial diversion or mediation, the county attorney or city  
7 attorney shall notify the ~~appropriate public office or~~ government  
8 agency responsible for the arrest or custody ~~that~~ when the juvenile  
9 has satisfactorily completed the resulting diversion or mediation.

10 (3) If the juvenile was taken into custody, arrested,  
11 cited in lieu of arrest, or referred for prosecution without  
12 citation and charges were filed, but later dismissed and any  
13 required pretrial diversion or mediation for any related charges  
14 have been completed and no related charges remain under the  
15 jurisdiction of the court, the county attorney or city attorney  
16 shall notify the government agency responsible for the arrest,  
17 custody, citation in lieu of arrest, or referral for prosecution  
18 without citation and the court where the charge or petition was  
19 filed that the charge or juvenile court petition was dismissed.

20 ~~(3)~~ (4) Upon receiving notice under subsection (1), (2),  
21 or ~~(2)~~ (3) of this section, the ~~public office or~~ government agency  
22 or court shall immediately seal all ~~original~~ records housed at  
23 that ~~public office or~~ government agency or court pertaining to  
24 the citation, arrest, record of custody, complaint, disposition,  
25 diversion, or mediation.

26 ~~(4)~~ (5) If a juvenile described in section 43-2,108.01  
27 has satisfactorily completed such juvenile's probation,

1 supervision, or other treatment or rehabilitation program  
2 provided under the Nebraska Juvenile Code or has satisfactorily  
3 completed such juvenile's diversion or sentence in county court;  
4 and

5 (a) The court may initiate proceedings pursuant to  
6 section 43-2,108.04 to seal the record pertaining to such  
7 disposition or adjudication under the juvenile code or sentence of  
8 the county court; and

9 (b) If the juvenile has attained at least the age of  
10 seventeen years, the court shall initiate proceedings pursuant  
11 to section 43-2,108.04 to seal the record pertaining to such  
12 disposition or adjudication, or under the juvenile code or  
13 diversion or sentence of the county court.

14 (6) If a juvenile described in section 43-2,108.01  
15 has satisfactorily completed diversion, mediation, probation,  
16 supervision, or other treatment or rehabilitation program provided  
17 under the Nebraska Juvenile Code or has satisfactorily completed  
18 the diversion or sentence ordered by a county court, the juvenile  
19 or the juvenile's parent or guardian may file a motion in the  
20 court of record asking the court to seal the record pertaining to  
21 the offense which resulted in such disposition, adjudication, or  
22 diversion of the juvenile court or diversion or sentence of the  
23 county court.

24 ~~(5) At any time after a juvenile described in section~~  
25 ~~43-2,108.01 has satisfactorily completed probation, supervision, or~~  
26 ~~other treatment or rehabilitation program under the code or has~~  
27 ~~satisfactorily completed diversion or sentence of the county court,~~

1 the court may, upon the motion of the juvenile or the court's own  
2 motion, initiate proceedings to seal the record pertaining to such  
3 disposition, dismissal following pretrial diversion under section  
4 43-260.04, or disposition under section 43-286 or any county court  
5 records pertaining to such county court diversion or sentence.

6 Sec. 9. Section 43-2,108.04, Revised Statutes Cumulative  
7 Supplement, 2010, is amended to read:

8 43-2,108.04 (1) The When a proceeding to seal the record  
9 is initiated, the court shall promptly notify the county attorney  
10 or city attorney involved in the case that is the subject of the  
11 proceeding to seal the record shall be promptly notified of the  
12 proceedings, and shall promptly notify the Department of Health and  
13 Human Services shall also be promptly notified of the proceedings  
14 if the juvenile whose record is the subject of the proceeding to  
15 seal the record is a ward of the state at the time the proceeding  
16 is initiated or if the department was a party in the case.  
17 proceeding.

18 (2) A party notified under subsection (1) of this section  
19 may file a response with the court within thirty days after  
20 receiving such notice.

21 (3) If a party notified under subsection (1) of this  
22 section does not file a response with the court or files a response  
23 that indicates there is no objection to the sealing of the record,  
24 the court may: (a) Order ~~order~~ the record of the juvenile under  
25 consideration be sealed without conducting a hearing on the motion;  
26 or (b) decide in its discretion to conduct a hearing on the motion.  
27 If the court decides in its discretion to conduct a hearing on the

1 motion, the court shall conduct the hearing within ~~thirty~~ sixty  
2 days after making that decision and shall give notice, by regular  
3 mail, of the date, time, and location of the hearing to the parties  
4 receiving notice under subsection (1) of this section and to the  
5 juvenile who is the subject of the record under consideration.

6 (4) If a party receiving notice under subsection (1)  
7 of this section files a response with the court objecting to  
8 the sealing of the record, the court shall conduct a hearing on  
9 the motion within ~~thirty~~ sixty days after the court receives the  
10 response. The court shall give notice, by regular mail, of the  
11 date, time, and location of the hearing to the parties receiving  
12 notice under subsection (1) of this section and to the juvenile who  
13 is the subject of the record under consideration.

14 (5) After conducting a hearing in accordance with this  
15 section, the court may order the record of the juvenile that is the  
16 subject of the motion ~~to~~ be sealed if it finds that the juvenile  
17 has been rehabilitated to a satisfactory degree. In determining  
18 whether the juvenile has been rehabilitated to a satisfactory  
19 degree, the court may consider all of the following:

20 (a) The age of the juvenile;

21 (b) The nature of the offense and the role of the  
22 juvenile in the offense;

23 (c) The behavior of the juvenile after the disposition,  
24 adjudication, diversion, or sentence and the juvenile's response to  
25 diversion, mediation, probation, supervision, other treatment and  
26 or rehabilitation programs, program, or sentence;

27 (d) The education and employment history of the juvenile;

1 and

2 (e) Any other circumstances that may relate to the  
3 rehabilitation of the juvenile, ~~who is the subject of the record~~  
4 ~~under consideration.~~

5 (6) If, after conducting the hearing in accordance with  
6 this section, the juvenile is not found to be satisfactorily  
7 rehabilitated such that the record is not ordered to be sealed, a  
8 juvenile who is a person described in section 43-2,108.01 or such  
9 juvenile's parent or guardian may not move the court to seal the  
10 record for a period of one year after the court's decision not to  
11 seal the record is made, unless such time restriction is waived by  
12 the court.

13 ~~(7) The juvenile court or county court shall provide~~  
14 ~~verbal notice to a juvenile whose record is sealed, if that~~  
15 ~~juvenile is present in the court at the time the court issues a~~  
16 ~~sealing order, and explain what sealing a record means.~~

17 ~~(8) The juvenile court or county court shall provide~~  
18 ~~written notice to a juvenile whose record is sealed under this~~  
19 ~~section by regular mail to the juvenile's last-known address, if~~  
20 ~~that juvenile is not present in the court at the time the court~~  
21 ~~issues a sealing order, that explains what sealing a record means.~~

22 Sec. 10. Section 43-2,108.05, Revised Statutes Cumulative  
23 Supplement, 2010, is amended to read:

24 43-2,108.05 (1) If the court orders the ~~records~~ record of  
25 a juvenile sealed pursuant to section 43-2,108.04, ~~the juvenile who~~  
26 ~~is the subject of the order properly may, and the court, county~~  
27 ~~attorneys, city attorneys, and institutions, persons, or agencies~~

1 ~~shall, reply that no record exists with respect to the juvenile~~  
2 ~~upon any public inquiry in the matter, and the court shall: do all~~  
3 ~~of the following:~~

4 (a) Order that all records, including any information  
5 or other data concerning any proceedings relating to the offense,  
6 including the arrest, taking into custody, petition, complaint,  
7 indictment, information, trial, hearing, adjudication, correctional  
8 supervision, dismissal, or other disposition or sentence, be deemed  
9 never to have occurred; and

10 (b) Send notice of the order to seal the record (i) to  
11 the Nebraska Commission on Law Enforcement and Criminal Justice,  
12 (ii) and, if the record includes impoundment or prohibition to  
13 obtain a license or permit pursuant to section 43-287, to the  
14 Department of Motor Vehicles, (iii) if the juvenile whose record  
15 has been ordered sealed was a ward of the state at the time  
16 the proceeding was initiated or if the Department of Health  
17 and Human Services was a party in the proceeding, to such  
18 department, and (iv) and to any law enforcement agencies, and  
19 county attorneys, and or city attorneys and institutions, persons,  
20 or agencies, including treatment providers, therapists, or other  
21 service providers, referenced in the court record;

22 (c) Order all notified under subdivision (1)(b) of this  
23 section to seal and order that all original records of the case be  
24 sealed, pertaining to the offense;

25 (d) If the case was transferred from district court to  
26 juvenile court or was transferred under section 43-282, send notice  
27 of the order to seal the record to the transferring court; and

1           (e) Explain to the juvenile what sealing the record means  
2 verbally if the juvenile is present in the court at the time the  
3 court issues the sealing order or by written notice sent by regular  
4 mail to the juvenile's last-known address if the juvenile is not  
5 present in the court at the time the court issues the sealing  
6 order.

7           (2) The effect of having a record sealed under section  
8 43-2,108.04 is that thereafter no person is allowed to release  
9 any information concerning such record, except as provided by  
10 this section. After a record is sealed, the person whose record  
11 was sealed can respond to any public inquiry as if the offense  
12 resulting in such record never occurred. A government agency and  
13 any other public office or agency shall reply to any public  
14 inquiry that no information exists regarding a sealed record.

15 Except as provided in subsection (3) of this section, an order to  
16 seal the record applies to every government agency and any other  
17 public office or agency that has a record relating to the ease,  
18 offense, regardless of whether it receives notice of the hearing  
19 on the sealing of the record or a copy of the order. Upon the  
20 written request of a person whose record has been sealed and the  
21 presentation of a copy of such order, a government agency or any  
22 other public office or agency shall seal all original records  
23 relating to the ease, pertaining to the offense.

24           (3) A sealed record is ~~still~~ accessible to law  
25 enforcement officers, county attorneys, and city attorneys, and  
26 the sentencing judge in the investigation, prosecution, and  
27 sentencing of crimes, to the sentencing judge in the and in the

1 ~~prosecution and~~ sentencing of criminal defendants, and to any  
2 attorney representing the subject of the sealed record. Inspection  
3 of records that have been ordered sealed under section 43-2,108.04  
4 may be made ~~only~~ by the following persons or for the following  
5 purposes:

6 (a) By the court or by any person allowed to inspect such  
7 records by an order of the court for good cause shown;

8 (b) By the court, city attorney, or county attorney  
9 for purposes of collection of any remaining parental support or  
10 obligation balances under section 43-290;

11 ~~(b)~~ (c) By the Nebraska Probation System for purposes  
12 of juvenile intake services, for presentence and other probation  
13 investigations, and for the direct supervision of persons placed  
14 on probation and by the Department of Correctional Services,  
15 the Office of Juvenile Services, a juvenile assessment center, a  
16 criminal detention facility, or a juvenile detention facility, for  
17 an individual committed to it, placed with it, or under its care;

18 ~~(e)~~ (d) By the Department of Health and Human Services  
19 for purposes of juvenile intake services, the preparation of case  
20 plans and reports, the preparation of evaluations, compliance with  
21 federal reporting requirements, or the supervision and protection  
22 of persons placed with the department or for licensing or  
23 certification purposes under sections 71-1901 to 71-1906.01 or  
24 the Child Care Licensing Act;

25 ~~(d)~~ (e) Upon application, by the juvenile person who is  
26 the subject of the sealed record and by ~~the person that is~~ persons  
27 authorized by the person who is the subject of the sealed record

1 who are named in that application;

2 ~~(e)~~ (f) At the request of a party in a civil action that  
3 is based on a case ~~the~~ that has a sealed record, ~~for which is the~~  
4 ~~subject of a sealing order issued under section 43-2,108.04,~~ as  
5 needed for the civil action. The party also may copy the sealed  
6 record as needed for the civil action. The sealed record shall be  
7 used solely in the civil action and is otherwise confidential and  
8 subject to this section; ~~or~~

9 ~~(f)~~ (g) By persons engaged in bona fide research, with  
10 the permission of the court, only if the research results in no  
11 disclosure of a ~~juvenile's~~ the person's identity and protects the  
12 confidentiality of the sealed record; ~~or-~~

13 (h) By a law enforcement agency if a person whose record  
14 has been sealed applies for employment with the law enforcement  
15 agency.

16 (4) No person shall knowingly release, disseminate, or  
17 make available, for any purpose involving employment, bonding,  
18 licensing, or education, to any person or to any department,  
19 agency, or other instrumentality of the state or of any of  
20 its political subdivisions, any information or other data  
21 concerning any arrest, taking into custody, petition, complaint,  
22 indictment, information, trial, hearing, adjudication, correctional  
23 supervision, dismissal, or disposition, the record of which has  
24 been sealed pursuant to section 43-2,108.04 and the release,  
25 dissemination, or making available of which is not expressly  
26 permitted by this section or court order. Nothing in this  
27 section shall ~~prohibit~~ prohibits the Department of Health and

1 Human Services from releasing~~7~~ ~~disseminating~~~~7~~ ~~or making available~~  
2 information from sealed records in the performance of its duties  
3 with respect to the supervision and protection of persons served by  
4 the department. ~~Any person who violates this section may be held~~  
5 ~~in contempt of court.~~

6 (5) In any application for employment, bonding, license,  
7 education, or other right or privilege, any appearance as a  
8 witness, or any other public inquiry, a person cannot be questioned  
9 with respect to any ~~arrest or taking into custody~~ offense for  
10 which the record is sealed. If an inquiry is made in violation of  
11 this subsection, the person may respond as if the sealed arrest  
12 ~~or taking into custody did not occur~~~~7~~ and the person is not  
13 subject to any adverse action because of the arrest or taking into  
14 custody ~~or the response.~~ offense never occurred. Applications for  
15 employment shall contain specific language that states that the  
16 applicant is not obligated to disclose a sealed juvenile record.  
17 ~~or sentence.~~ Employers shall not ask if an applicant has had  
18 a juvenile record sealed. The Department of Labor shall develop  
19 a link on the department's web site to inform employers that  
20 employers cannot ask if an applicant had a juvenile record sealed  
21 and that an application for employment shall contain specific  
22 language that states that the applicant is not obligated to  
23 disclose a sealed juvenile record ~~of arrest, custody, complaint,~~  
24 ~~disposition, diversion, adjudication, or sentence.~~

25 (6) Any person who violates this section may be held in  
26 contempt of court.

27 Sec. 12. Section 43-412, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           43-412 (1) Every juvenile committed to the Office of  
3 Juvenile Services pursuant to the Nebraska Juvenile Code or  
4 pursuant to subsection (3) of section 29-2204 shall remain  
5 committed until he or she attains the age of nineteen or is  
6 legally discharged.

7           (2) The discharge of any juvenile pursuant to the rules  
8 and regulations or upon his or her attainment of the age of  
9 nineteen shall be a complete release from all penalties incurred by  
10 conviction or adjudication of the offense for which he or she was  
11 committed.

12           (3) The Office of Juvenile Services shall provide the  
13 committing court with written notification of the juvenile's  
14 discharge within thirty days of a juvenile being discharged from  
15 the care and custody of the office.

16           Sec. 13. Section 43-416, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           43-416 The Office of Juvenile Services shall have  
19 administrative authority over the parole function for juveniles  
20 committed to a youth rehabilitation and treatment center and may  
21 (1) determine the time of release on parole of committed juveniles  
22 eligible for such release, (2) fix the conditions of parole,  
23 revoke parole, issue or authorize the issuance of detainers for  
24 the apprehension and detention of parole violators, and impose  
25 other sanctions short of revocation for violation of conditions of  
26 parole, and (3) determine the time of discharge from parole. The  
27 office shall provide the committing court with written notification

1 of the juvenile's discharge from parole within thirty days of a  
2 juvenile being discharged from the supervision of the office.

3           Sec. 24. Sections 6, 7, 8, 9, 10, 12, 13, and 25 of  
4 this act become operative three calendar months after adjournment  
5 of this legislative session. The rest of the sections of this act  
6 become operative on their effective date.

7           Sec. 25. Original sections 43-412 and 43-416,  
8 Reissue Revised Statutes of Nebraska, and sections 43-2,108.01,  
9 43-2,108.02, 43-2,108.03, 43-2,108.04, and 43-2,108.05, Revised  
10 Statutes Cumulative Supplement, 2010, are repealed.

11           2. Renumber the remaining sections and correct the  
12 repealer section accordingly.